
(2015) 08 MP CK 0030
In the Madhya Pradesh High Court
Case No : Writ Petition No. 929/2015

Farook Mohammad

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 243O, 243ZG, 243-ZG
Madhya Pradesh Municipalities Act, 1961 — Section 19, 55, 56(3)

Citation : (2016) 1 JLJ 304

Hon'ble Judges : Sheel Nagu, J.

Bench : Single Bench

Advocate : A.K. Nirankari, Advocate, for the Appellant; R.P. Rath, Govt. Advocate, for the Respondent

Judgement

Sheel Nagu, J.—By this petition under Article 226 of the Constitution of India challenge is made to the notice Annexure P-1 for convening the first meeting u/ S. 55 of the Municipalities Act 1961 ("1961 Act" for brevity), for holding elections to the Office of Vice President and two members of Appeal Committee, on the ground that the same is in violation of the mandatory provision u/S. 55 r/w Sec. 56(3) of the 1961 Act r/w Rule 3 (3) of the M.P. Municipalities (Election of Vice President) Rules, 1998 (1998 Rules for brevity), in as much as the said notice has not been dispatched seven clear days before the date of meeting.

2. Learned counsel for the rival parties are heard.

3. The foundational factual matrix attending the instant case detailed in a chronological manner is as follows.

4. The petitioner while assailing the above said election to the Office of Vice President and two members of Appeal Committee raises a singular ground that the time gap between the issuance of notice (dated 2.1.2015) u/S. 56(3) and convening of first meeting on 6.1.2015 was less than seven clear days as provided in mandatory terms in the above said provision and therefore the

meeting dated 6.1.2015 and the election conducted therein to the Office of Vice President and two members of the Appeal Committee is vitiated in law.

4.1 Reliance is placed on the decision of Division Bench of this Court in the case of Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) .

5. In the Division Bench decision of Awadh Behari (supra) the election to the Office of President of Municipal Council Maihar (the Office of President at that point of time was filled by indirect election as is the case of the Vice President herein) was called in question on various grounds including that the first meeting for holding indirect election to the office of President was held on 22nd of July, 1967 was invalid in as much as the notice for convening the first meeting was not dispatched as per Sec. 56(3) of the 1961 Act, seven (7) clear days before the first meeting.

5.1. The Division Bench in the case of Awadh Behari (supra) while considering the above said ground was faced with the factual background that the notice of first meeting was dated as 14th July, 1967 which was dispatched on 16th of July 1967 intimating the meeting to be convened on 22nd of July, 1967. The Division Bench after finding the Provision of Sec. 56(3) to be mandatory and distinguishing the case of K. Narasimhiah Vs. H.C. Singri Gowda, held thus:--

"9. There is a material distinction between Narasimhiah's case (supra) and the case before us. In the M.P. Municipalities Act, 1961, there is no provision for the curtailment of the notice period at the discretion of the Presiding Officer or the President or the Vice-President. There is also in the local Act no provision analogous to Section 35 of the Mysore Act. Section of the Act no doubt says that until the contrary is proved, every meeting of the Council or any of its committees shall be deemed to have been duly convened and held. But this presumption is rebuttable and good only until the contrary is proved. Here, the contrary has been proved by the fact that notice of the meeting was despatched on 15th July and the meeting was held on 22nd July, 1967 and seven clear days did not intervene.

10. Jai Charan Lal Vs. State of U.P. and Others, , and contended that in the computation of the period of seven clear days, only the day of despatch of the notice could be excluded and not the day of the meeting, and on that calculation, there was clearly an interval of seven clear days between the despatch of the notice and the holding of the meeting. In our judgment, the decision of the Supreme Court in Jai Charan Lal's case (supra) does not lay down the proposition that in the computation of the period of seven clear day's notice, both the terminal days cannot be excluded. On the other hand it lays down that-

"the expression "not earlier than thirty days" is not to be equated to the expression "not less than thirty days". It is no doubt true that where the expression is "not less than so many days" both the terminal days have to be excluded and the number of days mentioned must be clear days but the force of the words "not earlier than thirty days" is not the same. "Not earlier than thirty

days" means that it should not be the 29th day, but there is nothing to show that the language excludes the 30th day from computation".

These observations only reinforce the view taken in *Rambharoselal Gahoi vs. State of Madhya Pradesh* and AIR 1955 35 (Nagpur) and *Raghuvans Prasad v. Mahendra Singh*: 1967 MPLJ 941 that in the computation of seven clear day's notice period, both the terminal days have to be excluded. As, in the present case, seven clear days did not intervene between the date of despatch of the notice and the holding of the meeting on 22nd July, 1967, that meeting was clearly invalid; and consequently the election of the respondent No. 4 as the President of the Council as that meeting was also invalid. 11. The result is that this petition is allowed. The proceedings of the meeting held on 22nd July 1967 are quashed and the election of the Respondent No. 4 Inayatullah Khan as President of the Municipal Council, Maihar, is declared to be invalid and quashed. The Petitioner shall have costs of this application from the Respondent No. 4. Counsel's fee is fixed at Rs. 100. The outstanding amount of the security deposit shall be refunded to the Petitioner."

6. With utmost humility at my command, I am unable to agree with the view of the Division Bench for the reasons enumerated below:--

"1. The decision of *Awadh Behari* (supra) appears to have not considered the following legal aspects enumerated below which are followed by Judicial pronouncements in support of each aspect:--

(A) Whether breach of procedural provision contained in Sec. 56(3) of the 1961 Act can vitiate the entire elections duly held to the office of Vice President and two members of Appeal Committee. A mere shortage of notice period, without prejudice flowing therefrom, cannot unsettle an election held strictly following all the statutory and democratic norms.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) ,

31. A statutory provision must be so construed, if it is possible, that absurdity and mischief may be avoided. Where the plain and literal interpretation of a statutory provision produces a manifestly absurd and unjust result, the Court might modify the language used by the Legislature or even do some violence to it so as to achieve the obvious intention of the Legislature and produce a rational construction and just result.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) , [3 J.B.]

3. Of course, the advocacy of the counsel for the parties does play a very important role in unveiling the truth and in borderline cases the courts have to undertake the onerous task of, "disengaging the truth from falsehood, to separate the chaff from the grain". In our opinion, all said and done, if two views are reasonably possible-one in favour of the elected candidate and the other against him - courts should not interfere with the expensive electoral process and

instead of setting at naught the election of the winning candidate should uphold his election giving him the benefit of the doubt. This is more so where allegations of fraud or undue influence are made.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) ,

11. Having due regard to the ground realities, we must emphasise that functionaries in any manner concerned with directing the conduct, supervision and control of free, fair and peaceful elections to the House of the People and the Legislative Assemblies of the States need to adopt a realistic, pragmatic and flexible approach to ensure that the country shall be governed in its true, secular, socialist, democratic perspective.

Special Reference No. 1 of 2002, In re Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) , [5J. CONSTI BENCH]

136. In providing key to the meaning of any word or expression the context in which it is said has significance. Colour and content emanating from context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. It is a settled principle that in interpreting the statute the words used therein cannot be read in isolation. Their colour and content are derived from their context and, therefore, every word in a statute must be examined in its context. By the word "context", it means in its widest sense as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in pari materia and the mischief which the statute intended to remedy. While making such interpretation the roots of the past, the foliage of the present and the seeds of the future cannot be lost sight of. Judicial interpretation should not be imprisoned in verbalism and words lose their thrust when read in vacuo. Context would quite often provide the key to the meaning of the word and the sense it should carry. Its setting would give colour to it and provide a cue to the intention of the Legislature in using it. A word is not a crystal, transparent and unchanged; it is the skin of living thought and may vary greatly in colour and content according to the circumstances and the time in which the same is used as was observed by Holmes, J. in *Towne v. Eisner* [245 US 418, 425 : 62 L Ed. 372 (1917)]

149. In determining the question whether a provision is mandatory or directory, the subject-matter, the importance of the provision, the relation of the provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory. It is the duty of the courts to get the real intention of the legislature by carefully attending the whole scope of the provision to be construed. The key to the opening of every law is the reason and spirit of the law, it is the animus impotentia, "the intention of the lawmaker expressed in the law itself, taken as a whole". [See *Bratt v. Bratt*, (1826) 3 Addams 210.]

150. The necessity for completing the election expeditiously is enjoined by the

Constitution in public and State interest to see that the governance of the country is not paralysed.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)

48. If object of the enactment would be defeated by holding the provision as directory it will be construed as mandatory, whereas if by holding the provision mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment the same will be construed as directive.

(B) The Office of Vice President filled by indirect elections is not constitutionally provided in Part IX-A of Constitution of India which is an indication that Office of Vice President is not essential for a valid and legal composition, existence and subsistence of a Municipal Council as per section 19 of the 1961 Act which in turn raises necessary inference that all procedures connected to the elections to the Office of Vice President cannot be construed to be mandatory.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) , [3 J.B.]

13. ... The Constitution of India is the ground norm, demanding meticulous allegiance from all other laws. Statutes, Central/parliamentary or of State Legislatures, must mandatorily comply with our Constitution. We must hasten to emphasise that statutes must also conform with the discipline of the three lists contained in the Seventh Schedule to the Constitution. Most statutes postulate the promulgation of Rules, through delegated legislation, which, if they are not ultra vires the statute inasmuch as they are operational within the parameters of their parent pandects, require adherence. Executive orders or administrative instructions cease to have legal efficacy the moment they are contrary to their superiors i.e. the Constitution, a statute, or any delegated legislation in the form of rules or regulations. This is also referred to as "dominion paramountcy" by some courts. ...

(C) Procedural provisions are normally directory in nature unless the statute in express terms provides for a penal consequence for it's breach.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) , [5 J CONSTI. BENCH]

7. The general rule is we I settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also we I settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however have any application if the special law itself confers authority on a tribunal to proceed with a petition in accordance with certain

procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it. It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence, or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the tribunal entrusted with the trial of the case is not affected.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) , [3.J.B.]

23. If the word "shall" used in this expression is construed as mandatory, non-compliance of which nullifies the deposition, drastic consequence of miscarriage of justice would ensue even where omission of the witness' signature is by inadvertence and correctness of the deposition as well as its authenticity is undisputed. On the other hand, if the word "shall" used in this expression is treated as directory, the court will have power to prevent miscarriage of justice where the omission does not cause any prejudice and the defect is only technical. The object of the provision being merely to obtain acceptance of the witness to the correctness of the deposition, that object would be advanced by taking this view and thereby empowering the court to avoid the drastic consequence of nullifying the deposition where the correctness and authenticity is undisputed. In a case where the correctness has been disputed, it would be permissible for the court to examine the effect of omission of the witness' signature and to reject the deposition only if it does not accept the correctness and authenticity thereof on the available material.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)

11. There is a distinction between ministerial acts and statutory or quasi-judicial functions under the statute. When the statute requires that something should be done or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, the question often arises: What intention is to be attributed by inference to the legislature? It has been repeatedly said that no particular rule can be laid down in determining whether the command is to be considered as a mere direction or mandatory involving invalidating consequences in its disregard. It is fundamental that it depends on the scope and object of the enactment. Nullification is the natural and usual consequence of disobedience, if the intention is of an imperative character. The question in the main is governed by considerations of the object and purpose of the Act; convenience and justice and the result that would ensue. General inconvenience or injustice to innocent persons or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment would be kept at the back of the mind. The scope and purpose of the statute under consideration must be regarded as an integral scheme. The general rule is that

an absolute enactment must be obeyed or fulfilled exactly but it is sufficient if a directory enactment be obeyed or fulfilled substantially. When a public duty, as held before, is imposed and statute requires that it shall be performed in a certain manner or within a certain time or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements are not essential and imperative.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)

42. Having examined the Rules and the principles evolved by the Courts, let us now examine whether non-compliance with one of the facets of Rule 4(6) of the Rules would be fatal to the application filed by Dr. Madhu Tandon.

43. To answer this issue, it is necessary to find out, whether the Rule is directory or mandatory. If it is mandatory, then it is settled rule of interpretation, it must be strictly construed and followed and an act done in breach thereof will be invalid. But if it is directory, the act will be valid although the non-compliance may give rise to some other penalty if provided by the statute. It is often said that a mandatory enactment must be obeyed or fulfilled exactly, but, a directory provision non-compliance with it, has been held in many cases as not affecting the validity of the act done in breach thereof (see Principles of Statutory Interpretation, 11th Edn. 2008 by Justice G.P. Singh).

52. While considering the non-compliance with procedural requirement, it has to be kept in view that such a requirement is designed to facilitate justice and furthers its ends and, therefore, if the consequence of non-compliance is not provided, the requirement may be held to be directory.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)

5A. ... When consequence of nullification on failure to comply with a prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory. When the statute does not specifically provide for nullification as a consequence of the non-compliance of the statutory injunction but imposes expressly some other penalty, it is a question of construction in each given case whether the legislature intended to lay down an absolute prohibition or merely to make the offending person liable for the penalty. It may also be mentioned that the use of the word "shall" in many cases has been held to be directory, although it is ordinarily construed as mandatory, depending upon the real intention of the legislature and the scope of the statute. Where the enactment is mandatory it has to be obeyed or fulfilled exactly. A directory provision may be obeyed or fulfilled substantially but complete non-compliance of such a directory provision need not affect the validity of an act done in its breach. (See : Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) and Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) . The law in this regard has been

summed up by G.P. Singh, J. in his "Principles of Statutory Interpretation", 3rd Edition, at page 275, as follows:

"Those which should be substantially complied with to make the Act valid, (2) those which even if not at all complied with have no effect on the Act. The correct position appears to be that substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements."

(D) Procedural provisions are directory in nature unless prejudice or inconvenience is proved. Moreso the petitioner by his conduct of participating in the first meeting and contesting election without demur waived his right to assail the election.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) ,

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under - "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as

such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)

15. The general rule is that non-compliance of mandatory requirement results in nullification of the Act. There are, however, several exceptions to the same. If certain requirements or conditions are provided by statute in the interest of a particular person, the requirements or conditions, although mandatory, may be waived by him if no public interest is involved and in such a case the act done will be valid even if the requirements or conditions have not been performed. As has been construed by us, even though second part of the rule requiring dispatch of notice of the meeting to the member is mandatory, yet in every case of challenge to the proceeding of no-confidence motion either before the Collector or this Court, it would still be open to the Collector or this Court to find out whether in a given case non-compliance of any part of the rule has in fact resulted in any failure of justice or has caused any serious prejudice to any of the parties. The general rule is that a mandatory provision of law requires strict compliance and the directory one only substantial. But even where the provision is mandatory, every non-compliance of the same need not necessarily result in nullification of the whole action. In a given situation even for non-fulfillment of mandatory requirement, the authority empowered to take a decision may refuse to nullify the action on the ground that no substantial prejudice had been caused to the party affected or to any other party which would have any other substantial interest in the proceeding. This Court under Article 227 of the Constitution has also a discretion not to interfere even though a mandatory requirement of law has not been strictly complied with as thereby no serious prejudice or failure of justice has been caused. ...

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) ,

49. Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused.

(E) Procedural provisions relating to time are normally directory.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)

16. We get some support in our conclusion on the construction of the provisions contained in the Rule from Statutory Construction by Francis J. McCaffrey, 1953 Edition, Article 52 , Page 110 where it stated:

"Where a statute regulates the time at or within which an act is to be done by a public officer or body, it is generally construed to be permissive only as to the time, for the reason "that the public interests are not to suffer by the laches of any public officer" (Looney v. Hughes, 26 N.Y., 514). While the Courts are inclined to hold such provisions to be directory only as to time, they will be read as mandatory if the nature of the act to be performed or the phraseology of the statute indicates an intention on the part of the legislature to exact a literal compliance with the requirement of time. The Courts seek to achieve a just result in not ascribing an invalidating effect to the failure of public officers to observe the time provisions of statutes; a contrary rule would operate unfairly in prejudicing the rights of persons who have no control over the conduct of the public officer."

and from the following passage in Statutory Interpretation by Francis Bennion, Second Edition, Part I, Section 10 page 34:

"Even where the duty is mandatory, the Court will not now-a-days hold it to be contravened because of a purely formal or technical defect. This may be described as a defect that does not materially impair the remedy intended to be provided by the enactment for the mischief to which it is directed."

Rambharoselal Gahoi vs. State of Madhya Pradesh andAIR 1955 35 (Nagpur) , [3 J.B.]

48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory.

Rambharoselal Gahoi vs. State of Madhya Pradesh andAIR 1955 35 (Nagpur)

36. We are not oblivious of the fact that when public functionary is asked to perform a statutory duty within a specified time, the provisions of the statutes are normally held to be directory in nature. [See Rambharoselal Gahoi vs. State of Madhya Pradesh andAIR 1955 35 (Nagpur)] But the said principle would not apply in cases when injustice or inconvenience to others would be caused who have no control over those exercising the duty if such requirements are not essential or imperative. [See Rambharoselal Gahoi vs. State of Madhya Pradesh andAIR 1955 35 (Nagpur) .

(F) Procedural provisions are meant to further the cause of substantive provisions. The provision for issuance of notice by giving certain time gap between it's dispatch and holding of meeting is procedural in nature whereas conduction of the election to the office of Vice President is substantive provision.

Rambharoselal Gahoi vs. State of Madhya Pradesh andAIR 1955 35 (Nagpur)

8. A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.

Rambharoselal Gahoi vs. State of Madhya Pradesh andAIR 1955 35 (Nagpur) , [5 J. CONSTI. BENCH]

26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. ...

31. ... With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. ...

Rambharoselal Gahoi vs. State of Madhya Pradesh andAIR 1955 35 (Nagpur) , [3 J.B.]

10. In the matter of applicability of the procedural rigours the Constitution Bench of this Court in Rambharoselal Gahoi vs. State of Madhya Pradesh andAIR 1955 35 (Nagpur) has observed that laws of procedure are meant to regulate effectively, assist and aid the object of substantial and real justice and not to foreclose even an adjudication on the merits of substantial rights of citizen under personal, property and other laws. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. It follows from the decision by the Constitution Bench that the procedure would not be used to discourage the substantial and effective justice but would be so construed as to advance the cause of justice. ...

Rambharoselal Gahoi vs. State of Madhya Pradesh andAIR 1955 35 (Nagpur) , [3 J.B.]

28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the

opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Rambharoselal Gahoi vs. State of Madhya Pradesh* and AIR 1955 35 (Nagpur) are pertinent: (SCC p. 777, paras 5-6)

"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence - processual, as much as substantive."

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)

17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

- (i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;
- (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;
- (iii) where the non-compliance or violation is proved to be deliberate or mischievous;
- (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;
- (v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant."

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)

13. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of

procedure is altered, he has no other right than to proceed according to the altered mode. [See, Blyth v. Blyth, (1966) 1 All ER 524.] A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.

14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

(G) Procedural provisions prescribing public duty to be performed by a public functionary are directory in nature, unless public interest is hampered leading to injustice or inconvenience.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) , [5 J.CONSTI.BENCH]

3. ... It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done. ...

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) , [5 J CONSTI. BENCH]

9. ...

This Court relied on the following observations of the Judicial Committee of the Privy Council in Montreal Street Railway Company v. Normandin [AIR 1917 PC 142] in that connection:

"The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at.... When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)

125. Where a statute imposes a public duty and proceeds to lay down the

manner and time-frame within which the duty shall be performed, the injustice or inconvenience resulting from a rigid adherence to the statutory prescriptions may not be a relevant factor in holding such prescription to be only directory.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)

66. The question is whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.

67. In Maxwell on the Interpretation of Statutes, 10th Edn. at p. 381, it is stated thus:

"On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them."

(H) After introduction of Part IX-A - "The Municipalities" in the Constitution of India by way of 74th Amendment w.e.f. 01-06-1993, under Article 243ZG strict bar to interference by courts in electoral matters has been placed. The provision begins with a non-obstante clause thereby providing in mandatory terms that an election to any municipality ought not to be interfered with while exercising supervisory jurisdiction in a Writ Petition filed under Article 226 /227 except in very exceptional cases.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)
[Very short order, followed subsequently]

3. These appeals must be allowed on a short ground. In view of the mode of challenging the election by an election petition being prescribed by the M.P. Municipalities Act, it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243-ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition and also the fact that an earlier writ petition for the same purpose by a defeated candidate had been dismissed by the High Court.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)

19. In the first place, it would be better to consider as to whether the bar under Article 243-ZG(b) is an absolute bar. The article reads thus:

"243-ZG. (b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a State."

At least from the language of clause (b), it is clear that the bar is absolute. Normally, where such a bar is expressed in a negative language as is the case here, it has to be held that the tone of clause (b) is mandatory and the bar created therein is absolute.

20. This Court in its recent decisions has held the bar to be absolute. First such decision is Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) . In this case the election of the petitioner as the President of the Municipal Council was challenged by a writ petition under Article 226 , which was allowed setting aside the election of the petitioner. In para 3 of this judgment, the Court observed: (Jaspal Singh case, SCC p. 595)

"3. ... it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243-ZG , on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition...."

21. The second such decision is Gurdeep Singh Dhillon v. Satpa [(2006) 10 SCC 616]. In that decision, after quoting Article 243-ZG(b) the Court observed that the shortcut of filing the writ petition and invoking constitutional jurisdiction of the High Court under Articles 226 /227 was not permissible and the only remedy available to challenge the election was by raising the election dispute under the local statute.

Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur)

28. We have given our anxious consideration to the weight of the preliminary objection. We have also considered the decisions of the Supreme Court and of Punjab & Haryana High Court cited at bar. We find, as held by Supreme Court, the purpose of creating a bar under Articles 243O and 243ZG in electoral matters by the Court is obviously that objections or alleged breach of law in the process of election here or there by one Section of people or one section of contestants in a particular ward/s of constituency should not be allowed to stifle the election process to the detriment of not only the willing contestants but also the entire electorate and to cause waste of huge expenditure, energy and time of the staff employed in election machinery. As has been observed by the Supreme Court in Anugrah's case [Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR

1955 35 (Nagpur)] if such interferences at the instance of an individual or group of individuals is permitted on some or the other illegality in the process of election, no election can ever be completed within the time schedule.

29. No election should be interdicted or stalled merely on the ground of some alleged infraction of Rules or Procedure in holding the election and all disputes should be relegated to a stage after the conclusion of the election, through the election petition and on grounds available in election law. ..."

7. In view of the above, I am unable to concur with the view of the Division Bench in the case of Awadh Behari (supra) to the extent it holds the provision of Sec. 56(3) to be mandatory to the extent of vitiating the end result of the duly held elections to the Office of Vice President merely for the notice for convening first meeting falling short by prescribed seven (7) days in absence of any prejudice to petitioner for the reason of it's breach.

8. In terms of the provisions of Rule 8(3) of Chapter 4 of High Court of Madhya Pradesh Rules, 2008 matter be placed before Hon"ble the Chief Justice for placing the same before a larger Bench for considering the following question:--

"Whether the division bench decision in the case of Rambharoselal Gahoi vs. State of Madhya Pradesh and AIR 1955 35 (Nagpur) was correct to the extent of holding the provision of Sec. 56(3) of M.P. Municipalities Act 1961 as mandatory to the extent of vitiating the duly held elections to the office of Vice President despite the petitioner not only participating but also contesting the election without demur."